IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 3RD JANUARY 2007 / 13TH POUSHA 1928

Crl.MC.No. 21 of 2007()

AGAINST THE ORDER DATED 06/12/2006 IN CRMP 6093/06 IN CC.268/2002 of JUDL.MAGISTRATE OF FIRST CLASS-II, ERNAKULAM

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PETITIONER: PETITIONERS/ACCUSED

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1. SABNA ENGINEERING AND ENTERPRISES,
   REPRESENTED BY MOITHEENKUTTY, MANAGING PARTNER,
   MAIN ROAD, KOTTAKKAL, MALAPPURAM DISTRICT.

2. MOITHEENKUTTY,
   MANAGING PARTNER OF SABNA ENGINEERING AND
   ENTERPIRSES, MAIN ROAD, KOTTAKKAL,
   MALAPPURAM DISTRICT.

BY ADV. SRI.PROMY KAPRAKKATT
SRI.K.N.ABHILASH

RESPONDENTS: RESPONDENT / COMPLAINANT

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1. M/S POLAR INTERNATIONAL LTD (CULCUTTA),
   BRANCH OFFICE, 43/1349,
   ST.BENEDICT ROAD, ERNAKULAM, REPRESENTED BY
   ACCOUNDANT AND POWER OF ATTORNEY HOLDER
   P.SASIKUMAR.

2. THE STATE OF KERALA,
   REP.PUBLIC PROSECUTOR OF KERALA HIGH COURT,
   ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A.AKBAR

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 03/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.21 of 2007

Dated this the 3rd day of January 2007

O R D E R

The petitioner faces indictment in a prosecution under Section 138 of the Negotiable Instruments Act. Notice of demand was duly received and acknowledged. It evoked a reply to. In the reply, a contention was raised that the petitioner had occasion to give signed blank cheques as security to the complainant. No other specific contention was raised in relation to the cheque in question. Admittedly, there was no denial that the signature in the cheque was not that of the petitioner. In the course of the trial, the petitioner raised a contention that the signature in the cheque is not his. At the defence stage, he wanted the cheque to be sent to the expert for comparison. The learned Magistrate, by the impugned order (copy of which is produced as Annexure A) rejected the said prayer. The petitioner claims to be aggrieved by the said order. He has accordingly come before this court.

2. The impugned order is an interlocutory order and not a revisable one. That explains why the petitioner has come to this court with this petition under Section 482 Cr.P.C.

Ordinarily and normally, the petitioner must wait to challenge the interlocutory order along with the final order to be passed in the prosecution, if such challenge be necessary at that stage. But, of course, in a case where the conscience of the court is satisfied that failure/miscarriage of justice would result if such an order is not permitted to be challenged earlier, powers under Section 482 Cr.P.C can certainly be invoked.

3. In the facts and circumstances of this case, I find no reason to invoke the powers under Section 482 Cr.P.C. The theory that an unsigned blank cheque must also have been available with the complainant and the complainant, who had signed the blank cheques is making use of the the unsigned blank cheque of the petitioner after forging the petitioner's signature to stake such a false claim does not, at the moment, appear to be reasonable at all. However, I do not intend to express any final opinion on the merits of the contention. I need only observe that I am not persuaded to invoke the powers under Section 482 Cr.P.C to interfere with the impugned order at this interlocutory stage.

3. This Criminal Miscellaneous Case is in these circumstances dismissed. However, I hasten to observe that the

dismissal of this Criminal Miscellaneous Case will not in any way fetter the rights of the petitioner to challenge the impugned order, if the same be found to be necessary, along with the judgment to be passed in the prosecution.

(R.BASANT, JUDGE)

jsr

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006